Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

EMILY AMPS, LOUIS LASTER, TERRY MEZA, GINA DIXON and DIANNA VILLASANA,

Appellants,

v.

STATE OF TEXAS, ET AL,

Appellees.

On Appeal From The United States District Court For The Eastern District Of Texas, Tyler Division

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

I.

Since Court ordered single member districts were drawn to remedy intentional discrimination against minorities in Tarrant County, Texas in 1978, the geographical boundaries of State House District 93 contained identifiable and compact minority populations which grew from 30% in 1990 to constitute a 52% majority of the general population of the district by 2000. Minorities, however, are slightly less than a majority, 47.8% of the voting age population of the District. A coalition of minorities – Latinos, Asians, and African-Americans have worked together and voted cohesively to elect minorities within the District to non-partisan city council and school board positions. Reapportionment by the Legislative Redistricting Board reduced the overall population of the District by removing four overwhelmingly majority/minority precincts from District 93 and placed them in overwhelmingly Anglo neighboring districts, thus, reducing the minority voting age population of District 93. The District Court held that since the minority coalition was not a majority of the voting age in a single member district as District 93 existed before redistricting and not a majority in the District following redistricting no violation of the Voting Rights Act occurred. The questions presented are:

1. Whether a showing of geographical compactness and voting cohesiveness of a minority group in a single member district.not sufficiently large to constitute a majority is sufficient to prove a violation of Section 2

QUESTIONS PRESENTED – Continued

of the Voting Rights Act, where a state reapportionment plan removes minority voters from the district disregarding traditional redistricting principles and thus, dilutes and/or minimizes the influence of the minority voters?

a. The Court of Appeals for the Fifth Circuit's holding in *Valdespino v. Arlington Heights Independent Sch. Dist.*, followed by the District Court is in conflict with the Ninth Circuit case of *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990).

2. Whether fragmentation occurred in violation of Section 2 of the Voting Rights Act where reapportionment reversed long standing demographic changes within a single member district which ignored traditional redistricting principles such that the minority coalition would have constituted a majority of the citizen voting age population had traditional redistricting principles been applied?

II.

Chief District Judge John Hanna's concurring opinion explained the holding of the District Court finding that the House Redistricting plan was the result of political gerrymandering and disregard of traditional redistricting principles:

> The dominant political party treated all members of the opposition party as if they were "enemies of the State" instead of respected state leaders, many with a great wealth of governmental knowledge and ability that has and could inure to the benefit of Texas.

QUESTIONS PRESENTED – Continued

> The State has obviously ignored traditional redistricting principles in favor of political expediency. The State's lack of respect for political subdivision is evident. . . . The State may engage in political gerrymandering even if it "so happens that most loyal Democrats happen to be black Democrats and even if the State were conscious of that fact." (Citing *Hunt v. Cromartie*, 526 U.S. 541, 551, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999)).

The questions presented are:

1. Was the removal of predominately minority precincts from State Representative District 93 and the placement of those voters in overwhelmingly Anglo districts intentional discrimination in violation of the Fourteenth Amendment rights of the removed voters?

2. Does the District Court's approval of political gerrymandering violate the Equal Protection Clause of the Fourteenth Amendment and the teaching of *Davis v. Bandemer*, 478 U.S. 109 (1986)?

3. Did the LRB apportionment plan which politically gerrymandered contrary to traditional redistricting principles so as to consciously discriminate against Black Democrats violate the First Amendment right of association contrary to this Court's teaching in *Elrod v. Burns*, 427 U.S. 347 (1996)?

III.

Did the District Court err in failing to allow the Amps Intervenors to subpoena and question the State Attorney General, John Cornyn, as to the reason for his removal of minority precincts from State House District 93?

PARTIES TO THE PROCEEDING

Appellants Emily Amps, Louis Laster, Terry Meza, Gina Dixon and Dianna Villasana were intervenors in the case below as to the reapportionment of a single county, Tarrant County, Texas and intervened in the House of Representatives portion of the litigation styled *Simon Balderas, et al. v. State of Texas, et al.*, Civil Action No. 6:01-CV-158. Intervenors, Emily Amps, Louis Laster, Terry Meza, Gina Dixon and Dianna Villasana are all residents of State House of Representative District 93 as it existed prior to redistricting and/or after redistricting Intervenors Amps, Meza, Villasana are Latino registered voters within the district and Intervenors Laster and Dixon are African-American registered voters in the district as stated either before or after reapportionment.

A complete list of the parties to the proceeding follows:

Plaintiffs:

1. Simon Balderas
2. Gilberto Z. Torres
3. Texas League of United Latin American Citizens

Plaintiff Intervenors:

1. Brian Manley
2. Frank D. Sandoval Jr.
3. Eugene Pack
4. Congressman Tom DeLay
5. Congressman Joe Barton

PARTIES TO THE PROCEEDING – Continued

6. Congressman John Culberson
7. Associated Republicans of Texas
8. John Denoyelles
9. Morris Overstreet
10. Boyce T. Breedlove
11. David Brown
12. David O. Zambrano
13. Joy Smith
14. Vivian Harris
15. Tony Campos
16. Ed Gonzales
17. Margaret P. Rodriguez
18. Michael Moon
19. Dan Pedroza
20. Pauline Dixon
21. Raphael Quintanilla
22. Hargie Faye Savoy
23. Ralph McCloud
24. Dianna Villasana
25. Gina Dixon
26. Alex Vidales Sr.
27. George Rios
28. Roy Stanley
29. Phyllis Cottle
30. Dorothy M. Lee
31. Molly Woods
32. J. B. Mayfield
33. Ledbetter Neighborhood Association
34. Williamson County, Texas
35. Texas Farm Bureau Mutual Insurance Company
36. Roy Millner
37. Bonnie Breazeal
38. Bennie Escobar
39. Denise Escobar
40. William R. Leo

PARTIES TO THE PROCEEDING – Continued

41. Jesse Diaz
42. Lulac 4496 of Dallas
43. Congresswoman Eddie Bernice Johnson
44. Stephan Leroy Honore
45. Henry Martinez
46. Atascosa County, Texas
47. Bell County, Texas
48. Grayson County, Texas
49. Johnson County, Texas
50. Wichita County, Texas
51. Texas State Conference of NAACP Branches
52. Texas Coalition of Black Democrats
53. Art Murillo
54. Charles E. Vinn Sr.
55. Juanita Valdez-Cox
56. Leo Montalvo
57. Rolando Arriola
58. Emily Amps
59. Louis Laster
60. Terry Meza
61. Congressman Kevin Brady
62. Congressman Sam Johnson
63. Congressman Gene Green
64. Congresswoman Sheila Jackson Lee
65. Congressman Nicholas Lampson
66. Lester Bellow
67. Homer C. Guillory
68. Willie Davis
69. John Bland
70. Mexican-American Legislative Caucus, Texas House of Representatives
71. Guy C. Jackson III
72. John Archer
73. Howard County, Texas
74. Phil Sudan

PARTIES TO THE PROCEEDING – Continued

75. Congressman Ken Bentsen
76. The Texas Legislative Black Caucus

Defendant and Defendant Intervenors:

1. State of Texas
2. Rick Perry, Governor of Texas
3. James "Pete" Laney, Speaker of the Texas House of Representatives
4. Henry Cuellar, Secretary of State of Texas
5. Susan Weddington, Chair of Texas Republican Party
6. Molly Beth Malcolm, Chair of Texas Democratic Party
7. Bill Ratliff, Lieutenant, Governor of Texas
8. John Cornyn, Attorney General of Texas
9. Carol Keeton Rylander, Comptroller of Public Accounts of Texas
10. David Dewhurst, Texas Land Commissioner

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JURISDICTIONAL STATEMENT

Emily Amps, Louis Laster, Terry Meza, Gina Dixon and Dianna Villasana (hereinafter Amps Intervenors), below, appealed from the Memorandum Order and Judgment entered by the District Court on November 28, 2001 rejecting entirely the claims of the Amps Intervenors with regard to Tarrant County, Texas.

OPINIONS BELOW

The November 28, 2001 opinion of the District Court and the concurring opinion of United States District Judge John Hanna are not published, but appear in the Appendix at App. 1, and App. 10 respectively.

JURISDICTION

The District Court's judgment was entered on November 28, 2001. The Amps Intervenors filed Notice of Appeal to this Court on December 24, 2001, App. 14. The jurisdiction of the Court is invoked under 28 U.S.C. § 1253 (1994).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This appeal involves the Equal Protection Clause of the Fourteenth Amendment, Section 1 which reads in pertinent part as follows: " . . . nor shall any State deprive

any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

2. The First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and to petition the Government for redress of grievances."

3. Voting Rights Act, Section 2, 42 U.S.C. § 1973 which states in pertinent part as follows:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protection by subsection (a) in that its members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State of political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a

protected class elected in numbers equal to their proportion in the population.

STATEMENT OF THE CASE

A. Legal Proceeding

This case involves a challenge to the redistricting plan for the Texas House of Representatives. As a result of the failure of the Texas Legislature reapportioned in its regular session, the Texas Constitution provides for a Legislative Redistricting Board (hereinafter "LRB") comprised of the Attorney General, the Controller, the Land Commissioner, the Speaker of the House and the Lieutenant Governor to convene as a body and redraw legislative lines every ten years following the census. The Legislative Redistricting Board issued its final decision on a 3-2 vote with the Speaker of the House and Lieutenant Governor voting against the plan on July 24, 2001. Plaintiffs and Intervenors brought this action shortly thereafter. The three judge District Court heard testimony first on the congressional redistricting, then the Senate and then the House of Representatives. The Amps Intervenors (Appellants) claim violation of Section 2 of the Voting Rights Act and the Fourteenth Amendment with regard to that portion of the LRB plan affecting Tarrant County Texas, a county comprised of ten single member State Representatives districts. After the evidence was concluded, the Justice Department precleared the plan with the exception of certain House of Representative Districts that are addressed in the District Court opinion. The District Court ruled against the Amps Intervenors

(Appellants), holding that their voting rights challenge, under the Voting Rights Act and the Fourteenth Amendment, failed. The concurring opinion of Judge Hanna finds that the political gerrymandering had occurred, but found that political gerrymandering was permissible based on this Court's opinion in *Hunt v. Cromartie*, 526 U.S. 541, 551, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999). "Our prior decisions have made it clear that a jurisdiction may engage in constitutional political gerrymandering even if it so happens that the most loyal democrats happen to be black democrats and even if the state were *conscious* of that fact." 119 S.Ct. at 1551.

The Amps Appellants showed that State House District 93 had remained in its basic form since single member districts were drawn pursuant to federal court order in 1978. The Anglo population had been 70% as late as 1990, but with the 2000 census, was shown to be 52% minority (combined of Latinos, African-Americans, and Asians), although the voting age population was 47.6%. The District Court found the combined Latino, African-American and Asian minority population did work as a coalition and voted cohesively but did not constitute a majority of a single member district so as to comply with *Thornburg v. Gingles*, 478 U.S. 30 (1986). The District Court did not rule on the Amps' claim of intentional discrimination in violation of the Fourteenth Amendment.

B. Statement of Facts

The Amps Intervenors showed a continuing history of suppression of the votes of minorities in Tarrant

County, Texas, a county which within its boundaries contains fully and entirely ten single member legislative districts. A three judge federal district court decision in *Graves v. Barnes*, 378 F.Supp. 640 (N.D. Tex. 1974) (Woods, dissenting), *aff'd sub nom. Briscoe v. Escalante*, 435 U.S. 901 (1978), struck down as unconstitutional multi-member districts conceived and perpetrated as a result of intentional efforts to prevent minorities from gaining access to the ballot box. The LRB plan at issue for Tarrant County (1289H) packed African-Americans into a single district, District 95 which contained a combined Black and Hispanic population of 77.4%. District 90 had a combined Black and Hispanic population of 74%. Only one of Tarrant County's ten state representatives is a minority, despite a combined minority population of 39%.

State Representative District 93 remained virtually the same since court ordered single member districts in 1978. State Representative Toby Goodman, a white male Republican, currently represents District 93. In 1990, District 93 was 70% Anglo, but by the 2000 census only 47.4% of the population was Anglo with 18.6% African-American, 26.2% Hispanic and 8.2% Asian. However, the voting age population of the district prior to redistricting was 52.1% Anglo, 16.7% African-American, 23.2% Hispanic and 8.3% Asian. The district traditionally had the Trinity River as its northern boundary and the county line its eastern boundary. The Arlington and Grand Prairie sections were in a single school district. The changing demographics of the Grand Prairie and Arlington portions of the district have accounted for a large portion of the growth of the minority population.

Testimony from the President of the Arlington Hispanic Chamber of Commerce, John Ramon, the Director of the Asian Chamber of Commerce, Sunny Graham, as well as from Intervenor and community activist, Terry Meza, was uncontroverted as to the cohesion of the African-American, Latino and Asian minority voters who have joined together and formed coalitions around issues such as public transportation, police relations with minority groups and single member districts for city council elections, and minority participation in public works projects. Such coalition was responsible for the election of the first Black mayor of the city of Arlington, Elzie Odom, who won the race against white opposition by 82 votes out of 17,000 cast and the President of the Arlington Independent School District School Board, Michael Glaspie, who also won a narrow victory against an Anglo opponent. With the exception of two voting precincts in the city of Mansfield, the Arlington Independent School District is the only school district in District 93 and about half of the city of Arlington is in the District.

The anecdotal evidence was supported by expert testimony of Dr. Paul Geisel, a professor of Urban Affairs, City/Regional Planning in Urban Sociology at the University of Texas at Arlington where he had taught for over thirty years. Active in the number of community organizations and deeply involved in issues involving race, housing, demographic trends, and social economics, Dr. Geisel had analyzed political campaigns resulting in the election of Elzie Odom and Michael Glaspie and testified that African-Americans, Latinos and Asians had in those elections voted as a block to elect two African-

American public officials elected within the confines of State House District 93 while Anglo voters opposed these candidates. The incumbent state representative, an Anglo Republican, had not been challenged with a Democrat or Republican opponent in the last decade. Dr. Geisel testified that the heavily minority precincts in east Arlington and west Grand Prairie, precincts 2491, 2180 and 2402 were placed in House District 92, a 75% Anglo district representing three suburban cities, Hurst, Euless and Bedford, which was in violation of traditional principles of redistricting by refusing to respect the communities of interest, political boundaries, subdivisions and traditional geographical boundaries. The three precincts were in a different school district and city, and had totally different socio-economic populations as well as differing racial ethnic groups than suburban District 92. The LRB plan removed predominantly minority Precinct 2190, a precinct with the oldest and largest African-American church in Arlington, Mount Olive Baptist Church, and had reigned as a political force in east Arlington for over fifty years, and placed it in House District 94, a 69.8% Anglo district. Mount Olive Baptist Church, according to all of the Amps Intervenors' anecdotal evidence had served as a center for organizing the African-American community in east Arlington and was largely responsible for the election of Elzie Odom as Mayor of Arlington and Michael Glaspie, as President of the Arlington Independent School District. Dr. Geisel testified that LRB plan dilutes the votes of minority community by shifting the highest percentage of minority precincts into white, suburban districts, thus, preventing the effective coalition of African-American, Latinos and Asians from being able to

elect a candidate of its choosing. Dr. Geisel testified that minority coalition was cohesive as reflected in Arlington municipal and school district elections and there was no reason to believe they would not continue to do so in a partisan general election. Professor Geisel proposed House Redistricting Plan 1319H to preserve the core of the original District 93 and which adjusted for citizen voting age population had a minority citizen voting age population of 50%.

Intervenors' other expert, attorney Don Gladden, testified that there was a history in Tarrant County of state representatives and county commissioners intentionally diluting and suppressing minority voters. According to the 2000 census, Tarrant County has an Anglo population of 61%, with African-Americans constituting 12.6%, Latinos 20%, and Asians 5.8% and yet Tarrant County only has one minority out of ten state representatives. Gladden testified that as an attorney for minority groups, he had brought challenge in federal court in *Graves v. Barnes, aff'd sub nom. Briscoe v. Escalante*, 435 U.S. 901 (1978), and further, successfully challenged racially gerrymandered commissioners', and justice of the peace precincts. Both Gladden and Geisel stated in their opinion the reason for removal of minority precincts from District 93 was an intentional purpose to dilute and suppress minority vote. The State provided no rebuttal evidence as to why minority precincts were removed from District 93 or why the State failed to follow its own redistricting guidelines disregarding political boundaries and traditional geographical boundaries in reapportionment of Tarrant County, Texas. The District Court, however, never addressed the Amps Intervenors' claims of intentional

racial gerrymandering under Section 1983. In single paragraph 3B, the District Court rejected the Amps Intervenors' claims under the Voting Rights Act stating, "the evidence did not persuade us, however, Latinos, Asians, and African-Americans vote cohesively as required by *Thornburg v. Gingles*, so as to constitute a majority of a single member district," but made no fact finding on the uncontroverted evidence that these groups did vote cohesively and had constituted the sufficient majority to elect one of their own in non-partisan city council and school board elections.

The District Court did not make a specific fact finding on the Amps Intervenors' intentional racial gerrymandering claim. By reference to cases, *Growe v. Emison*, 507 U.S. 25, 13 S.Ct. 1075, 122 L.Ed.2d 388 (1993) and *Valdespino v. Arlington Heights Independent Sch. Dist.*, 168 F.3d 884 (5th Cir. 1999), the District Court apparently held that the Amps Intervenors' proof failed since no single minority group constituted better than 50% of the voting age population or in the alternative that the combined group of Latinos, Asians, and African-Americans in the LRB plan failed to meet the test of 50% or greater citizen voting age population.

The other rationale for the Court's opinion is contained in the concurring opinion of Chief District Judge John Hanna, Jr., who found "the dominant political party treated all members of the opposing party as if they were 'enemies of the state' instead of respecting state leaders, many with a great wealth of governmental knowledge and ability that has and could benefit Texas. The State has obviously ignored traditional redistricting principles in favor of political expediency. The State's lack of respect

for political boundaries is evident." Judge Hanna cited several examples from the Senate redistricting, holding "the State may engage in political gerrymandering even if it so happens that most loyal Democrats happen to be Black Democrats and even if the State were *conscious* (emphasis by the Court) of that fact" citing this Court's opinion in *Hunt v. Cromartie*, 526 U.S. 541, 551, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999).

ARGUMENT

I.

Since the federal courts ordered single member districts drawn to remedy intentional discrimination against minorities in Tarrant County, Texas in 1978, the geographical boundaries of State House District 93 contained identifiable and compact minority populations which grew from 30% in 1990 to constitute a 52% majority of the general population of the district by 2000. Minorities, however, are slightly less than a majority, 47.8% of the voting age population of the District. A coalition of minorities – Latinos, Asians, and African-Americans have worked together and voted cohesively to elect minorities within the District to non-partisan city council and school board positions. The State reapportionment by the Legislative Redistricting Board removed four overwhelmingly majority/minority precincts from District 93 and placed them in overwhelmingly Anglo neighboring districts, thus, reducing the minority voting age population of District 93. The District Court held that since minority coalition was not the majority voting age in a single

member district as District 93 existed before redistricting and not a majority in the District following redistricting no violation of the Voting Rights Act occurred. The questions presented are:

1. **Whether a showing of geographical compactness and voting cohesiveness of a minority group in a single member district not sufficiently large to constitute a majority is sufficient to prove a violation of Section 2 of the Voting Rights Act, where a state reapportionment plan removes minority voters from the district disregarding traditional redistricting principles and thus, dilutes and/or minimizes the influence of the minority voters?**

The evidence presented of voting cohesiveness on the part of minority groups in State House District 93, east Arlington and west Grand Prairie and the dilution and minimization of that vote by removing four heavily minority voting precincts and placing them in overwhelmingly Anglo House districts was unrebutted by the State of Texas. The concurring opinion by District Judge Hanna finds that the State "obviously ignored traditional redistricting principles in favor of political expediency." This Court in *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986), held:

> The essence of a § 2 claim is that a certain electorial law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.

478 U.S. at 47.

The Court in *Thornburg* and subsequently in *Growe v. Emison*, 507 U.S. 25, 122 L.Ed.2d 388, 113 S.Ct. 1075 (1993) fn. 5, did not reach or resolve the question advanced here of "whether, when a plaintiff alleges that a voting practice or procedure impairs minority's ability to influence rather than alter, election results, a showing of geographical compactness of a minority group not sufficiently large to constitute a majority will suffice." 122 L.Ed.2d at 404. The case at bar illustrates why the Court should accept and resolve this issue.

Here, in a district whose lines have changed little in over twenty years, changing demographics have made the district a majority of minorities although the voting age population is slightly less than a majority. The Republican incumbent legislator has not been challenged in a decade. The minority groups however, have worked together to elect minority representatives to the non-partisan school board and city council within the district. No reason has been advanced by the State for violating the traditional redistricting principles crossing political and geographical boundaries and placing Intervenors such as Gina Dixon in neighboring, but distant (because of the Trinity River bottom and the geographical and natural boundary created by the river) District 92, an overwhelmingly Anglo district where Ms. Dixon's vote as an African-American in a district over 70% Anglo will have little or no influence. As an African-American resident of west Grand Prairie in the traditional District 93 with a combined minority population of 47.8%, Gina Dixon as an active, interested voter will have a great deal of influence in the selection of her State Representative and she would have the ability to coalesce with Anglo

voters of similar interests to elect minority representative as has occurred in the city of Arlington with the election of a Black mayor and the Arlington Independent School District with the election of a Black School Board President.

The history of the Voting Rights Act and of the 1982 Amendments do not require a minority group alleging a denial or abridgement of their right to vote to be a majority in order to prevail under Section 2. "As a result of the challenge practiced or structured, Plaintiffs do not have an equal opportunity to participate in the political processes. . . . " *Thornburg, supra,* 478 U.S. at 44. The Plaintiffs here have demonstrated what is required by Section 2 by showing a history of voting related discrimination, *see Graves v. Barnes,* 446 F.Supp. 560 (W.D. Tex. 1977) (Wood, J., dissenting), *aff'd sub nom. Briscoe v. Escalante,* 435 U.S. 901 (1978), and racially polarized voting, even in recent non-partisan elections where Blacks were elected by slim majorities (African-American Mayor of Arlington Elzie Odom was elected by 82 votes out of 17,000 cast). The Legislative Redistricting Board inexplicably violated well known and traditional redistricting practices and removed minority precincts to districts with completely different political subdivisions, school districts, and of course, minority composition. While the evidence clearly shows intentional racial gerrymandering, it most certainly also establishes a violation of the Voting Rights Act in that it deprives minority citizens of an equal right to "participate in the political process." *Thornburg,* 478 U.S. at 43.

a. The Court of Appeals for the Fifth Circuit's holding in *Valdespino v. Arlington Heights Independent Sch. Dist.*, followed by the District Court is in conflict with the Ninth Circuit case of *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990).

The Fifth Circuit opinion relied upon by the District Court *Valdespino v. Alamo Heights Independent Sch. Dist.*, 168 F.3d 848 (5th Cir. 1999) is a direct conflict with the Ninth Circuit opinion in *Garza v. County of Los Angeles*, 819 F.2d 763 (9th Cir. 1990), *cert. den.*, 111 S.Ct. 681 (1991). This Court should resolve this conflict among the Circuits by adopting the Ninth Circuit standard, holding that an adequate showing under Section 2 of the Voting Rights Act is made by minority groups whose geographical compactness, cohesiveness, and active participation in the political process is protected against dilution and minimization by reapportionment schemes that ignore traditional redistricting principles.

2. Whether fragmentation occurred in violation of Section 2 of the Voting Rights Act where reapportionment reversed long standing demographic changes within a single member district and ignored traditional redistricting principles such that the minority coalition would have constituted a majority of the citizen voting age population had traditional redistricting principles been applied?

Here consistent with the Supreme Court opinion in *Voinovich v. Quilter*, 507 U.S. 146, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993), the minority population of the District prior to redistricting was not in excess of 50%. However,

by using traditional redistricting principles in presenting their redistricting plan, the Amps Intervenors demonstrated the combined minority citizen voting age population in excess of 50% was easily obtainable in this District that was over-populated and hence needed to loose some of its population. By removing the minority precincts and placing them in overwhelmingly Anglo districts, the LRB fragmented minority groups among various districts an acknowledged dilution device, thus contributing to the lack of overall proportionality in Tarrant County where only one out of ten legislators is a minority despite a 39% minority population.

In *Voinovich v. Quilter, supra,* the *Gingles* factor was applied to fragmentation of minority groups among various districts which is an acknowledged dilution device prohibited by Section 2 of the Voting Rights Act. Here the unrefuted testimony by the Amps Intervenor witnesses showed a clear accelerating demographic trend to increase minority population within House District 93 which in ten years went from a 70% Anglo district to a 47% Anglo district by population. Thus, the reversal of that trend by removing minorities from District 93 that was over-populated and hence needed to lose some population in order to maintain the correct one man one vote proportion was a case of fragmentation of minority vote by reversing the historic demographic trend through the use of non-traditional redistricting principles such as placing minorities beyond political subdivisions and geographic boundaries traditionally used to redistrict.

II.

Chief District Judge John Hanna's concurring opinion explained the holding of the District Court finding that the House Redistricting plan was the result of political gerrymandering and disregard of traditional redistricting principles:

> The dominant political party treated all members of the opposition party as if they were "enemies of the State" instead of respected state leaders, many with a great wealth of governmental knowledge and ability that has and could inure to the benefit of Texas.
>
> The State has obviously ignored traditional redistricting principles in favor of political expediency. The State's lack of respect for political subdivision is evident. . . . The State may engage in political gerrymandering even if it "so happens that most loyal Democrats happen to be black Democrats and even if the State were conscious of that fact." (Citing *Hunt v. Cromartie*, 526 U.S. 541, 551, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999)).

1. Was the removal of predominately minority precincts from State Representative District 93 and the placement of those voters in overwhelmingly Anglo districts intentional discrimination in violation of the Fourteenth Amendment rights of the removed voters?

The District Court's concurring opinion, consistent with the testimony of Intervenors' antidotal witnesses, Terry Meza, Gina Dixon, Sunny Graham and John Ramon, finds that no community of interest or geographical or

subdivision boundary or any other traditional distracting principle or guideline accounted for the removal of western Grand Prairie Precinct 2190 and eastern Arlington precincts in the traditional boundaries of District 93 and placing those in suburban Districts 92 and 94 that were overwhelmingly Anglo Districts. The Amps Intervenors' expert witnesses Dr. Geisel and Don Gladden testified that no explanation under traditional distracting principles justified these changes which diluted and minimized the minority vote in District 93 and in their opinion race was the only motivating factor for the reapportionment of this district under the LRB plan. They both testified that such racial gerrymandering was consistent with the history of voter suppression in Tarrant County, Texas. Both testified that fragmentation of minorities by the LRB plan in District 93 and the packing of Tarrant County's intercity minority populations into two districts, District 90 and District 95 fragmented minority populations from becoming effective in other districts and resulted in only one of Tarrant County's ten state legislators being elected to the House of Representatives despite a combined 39% minority population.

The District Court erred in seizing upon the statement by Justice Thomas characterizing this Court's opinion in *Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993); *Shaw v. Hunt*, 517 U.S. 899, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996); *Miller v. Johnson*, 515 U.S. 900, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995); and *Bush v. Vera*, 517 U.S. 952, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996), as holding that political gerrymandering is permissible "even if it so happens that the most loyal democrats happen to be black democrats and even if the State was

conscious (emphasis by the court) of that fact." *Hunt v. Cromartie*, 526 U.S. 541, 551, 119 S.Ct. 1545, 1551, 143 L.Ed.2d 731 (1999). Ignoring for the moment that a majority of this Court found the political gerrymandering was contrary to the equal protection clause, *Davis v. Bandemer*, 478 U.S. 109, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986), this Court's decisions in *Bush v. Vera* and *Shaw v. Reno* did not permit, much less hold that the State may consciously and thus, intentionally gerrymander Black citizens under the guise of their party label.

In *Shaw v. Reno, supra*, this Court held that strict scrutiny should apply to any redistricting plan, that although apparently race neutral is "unexplainable on grounds other than race." 113 S.Ct. at 2825. *Shaw* observes that any such racial clarification is presumptively unconstitutional and may be sustained by the State only upon a compelling state interest. 113 S.Ct. at 2825. The Court in *Shaw*, discussed the factors that are traditionally used in the redistricting process to draw district boundaries such as compactness, contiguity, and respect for political subdivisions. 113 S.Ct. at 2827. The Court held that compactness, contiguity, and respect for political subdivisions are "objective factors that may serve to defeat a claim the district has been gerrymandered on racial lines." 113 S.Ct. at 2827.

In *Bush v. Vera, supra*, Justice O'Connor for a plurality of the Court analyzed an intentional discrimination case as a "mixed motive" case citing two seminal cases on the intent requirement under the Fourteenth Amendment, *Washington v. Davis*, 426 U.S. 229 (1976) and *Arlington Heights v. Metro Housing Corp.*, 429 U.S. 252 (1977). The

Arlington Heights Court set out the evidentiary requirement for proving intent in redistricting cases as follows:

> Davis does not require a plaintiff to prove that the challenged action rested solely on racially discriminatory purposes. Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the "dominate" or "primary" one. In fact, it is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.
>
> Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. . . . Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face. 429 U.S. at 265, 266.

Here the concurring opinion of District Judge Hanna must be read as explaining the Court's rationale for upholding the LRB plan despite uncontroverted testimony that race was the only motivating factor causing the fragmentation of the minority community in District 93 and the packing of minorities in Districts 90 and 95.

The District Court was misguided in accepting the *Cromartie, supra,* characterization of this Court's other redistricting precedents, which clearly and unequivocally hold that any race conscious classifications, even those crouched in political terms, must be analyzed under the strict scrutiny required by the Fourteenth Amendment.

2. Does the District Court's approval of political gerrymandering violate the Equal Protection Clause of the Fourteenth Amendment and the teaching of *Davis v. Bandemer*, 478 U.S. 109 (1986)?

The District Court's approval of intentional political gerrymandering contrary to traditional redistricting principles that dilutes and/or minimizes the vote of racially identifiable minority group or groups violates the Equal Protection Clause of the Fourteenth Amendment and the teaching of *Davis v. Bandemer,* 478 U.S. 109 (1986). This Court in *Davis v. Bandemer,* 478 U.S. 109 (1986) clearly protected under the Fourteenth Amendment, gerrymandering strictly along party lines. Based on the teaching of *Bush v. Vera, supra,* and *Shaw v. Reno, supra,* the type of political gerrymandering described by the concurring opinion of the District Court that dilutes and or minimizes the vote of racial minority also fall under the mixed motive analysis described above. Furthermore, classifying African-Americans as Democrats and then diluting or minimizing their vote for that reason runs afoul of the Court's teaching in *Davis v. Bandemer* and should invoke the same type of scrutiny set out in *Bush v. Vera, supra.* Here, the political gerrymandering with racial intent was uncontroverted by the State's single expert presented at the House Redistricting case, John R. Alford, Associate

Professor at Rice University. Dr. Alford participated in the drawing of House lines as an Assistant to the Attorney General, John Cornyn, but was unable to explain or provide any rationale for removing minority precincts from District 93. The State has provided no compelling reason for fragmentation of District 93 and the removal of minorities to overwhelmingly Anglo precincts.

3. Did the LRB apportionment plan which politically gerrymandered contrary to traditional redistricting principles so as to consciously discriminate against Black Democrats violate the First Amendment right of association contrary to this Court's teaching in *Elrod v. Burns*, 427 U.S. 347 (1996)?

Applying the dicta of *Hunt v. Cromartie, supra,* the District Court (according to the author of its concurring opinion), would allow the State to suppress the voting rights of citizens based on their association with a particular political party, a practice condemned by this Court in the context of state employment in *Elrod v. Barnes*, 427 U.S. 347 (1996). It would be an odd, if not outrageous, proposition that a citizen is protected from State sanction due to political party association while seeking or maintaining governmental employment but subject to State sanction for such association in the constitutionally protected area of the right to vote. The statement by Justice Thomas, in *Cromartie, supra,* although clearly antagonistic to the First Amendment right of freedom of association, so treasured by those interpreting the Constitution by reference to its original origins does not correctly summarize this Court's redistricting decisions. Rather, it seems

that the District Court's reliance upon the *Cromartie* statement is erroneously the rationale for upholding a plan which admittedly clearly gerrymandered along political party lines, as well as classifying persons by race under the Fourteenth Amendment. The right to vote is far more sacred than the right to not be terminated from government employment because of your political association, and while both are reprehensible, the latter pales in significance to the freedom of expression and association through the ballot box. The LRB political gerrymandering as determined by the District Court offends the right of freedom of association guaranteed by the First Amendment.

III.

Did the District Court err in failing to allow the Amps Intervenors to subpoena and question the State Attorney General, John Cornyn, as to the reason for his removal of minority precincts from State House District 93?

The District Court overruled a request by the Amps Intervenors in the Pre-Trial Order and again at trial to subpoena and present as a witness, State Attorney General, John Cornyn, one of the three legislative members of the LRB. The Amps Intervenors showed that after their representatives had made a presentation before the LRB, Attorney General Cornyn had a preliminary plan that had not removed all of the minority precincts from District 93, but, at the last minute, changed his plan to remove the minority precincts. Cornyn claimed a "legislative" privilege which was upheld in the state court proceeding to which Amps Intervenors were not a party. No

such privilege applies in the Federal Rules of Evidence and the presentation of a colorable claim of constitutional deprivation under the Fourteenth Amendment requires proof of intent that necessitates the author of the plan alleged to be intentionally discriminatory submit to cross-examination as to his intent. No other witness for the State, including its expert, Prof. Alford, were able to explain why traditional redistricting principles were ignored and minority precincts were moved across political subdivisions and joined with other cities, despite natural boundaries, precluding any community of interest or commonality between those Districts. The minority precincts were isolated by these geographical boundaries for which there is at least a twenty minute drive in order to link them and the rest of their fellow citizens in District 92. In order to fairly meet the burden of showing intentional motivation required by *Washington v. Davis, supra,* the District Court erred in refusing the Amps Intervenors' request to cross-examine the author of the LRB plan.

CONCLUSION

This Court should note probable jurisdiction and require that this case be heard on the merits.

Respectfully submitted,

ARTHER JOHN BRENDER, JR.
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL.	§	
vs.	§	CIVIL ACTION
STATE OF TEXAS, ET AL.	§	NO. 6:01CV158
	§	(Filed Nov. 28, 2001)

This Filing Applies to: All Actions

Before HIGGINBOTHAM, Circuit Judge, HANNAH and WARD, District Judges.

PER CURIAM:

This phase of the case involves the redistricting of the Texas State House of Representatives following the 2000 census. Following the failure of the state legislature to implement a redistricting plan for the House, the state constitutionally-created Legislative Redistricting Board adopted a plan, Plan 1289H, on July 24, 2001, to redistrict the 150 House seats.[1] Because Texas is a "covered" jurisdiction under section 5 of the Voting Rights Act, the State then submitted this plan to the United States Department of Justice for preclearance on August 16, 2001.[2] We heard evidence relating to House redistricting on November 13-15, 2001. On November 16, 2001, the Justice Department objected to the LRB House plan as causing a retrogression with respect to the number of Hispanic

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[1] *See* Tex. Const. art. III, § 28.

[2] *See* 42 U.S.C. § 1973c.

opportunity districts. We will first describe the course of this litigation and then address the parties' contentions.

I

Voters and various officeholders filed multiple lawsuits in state and federal court challenging the districting of Texas' congressional seats and both houses of the state legislature based on the 2000 census.[3] The federal cases were consolidated into the earliest-filed federal action, *Balderas v. Texas*, No. 6:01-CV-158, before this three-judge court.[4]

The Texas Constitution requires that the Texas legislature, "at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts."[5] The Constitution also provides that, "[i]n the event the Legislature shall at any such first regular session following the publication of a United States decennial census, fail to make such apportionment, same shall be done by the Legislative Redistricting Board of Texas," which is "composed of

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[3] *Balderas v. Texas*, Civil No. 6:01-CV-158 (E.D. Tex.); *Mayfield v. Texas*, Civil No. 6:01-CV-218 (E.D. Tex.); *Manley v. Texas*, Civil No. 6:01-CV-231 (E.D. Tex.); *Del Rio v. Perry*, No. GN-003665 (353rd Dist. Ct., Travis County, Tex.); *Cotera v. Perry*, No. GN-101660 (353rd Dist. Ct., Travis County, Tex.); *Connolly v. Perry*, No. GN-102250 (98th Dist. Ct., Travis County, Tex.); *Associated Republicans of Texas v. Cuellar*, No. 2001-26894 (281st Dist. Ct., Harris County, Tex.); *Rivas v. Cuellar*, No. 2001-33760 (152nd Dist. Ct., Harris County, Tex.).

[4] Other three-judge courts had dismissed prior suits filed prematurely.

[5] Tex. Const. art. III, § 28.

five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office."[6] In May 2001, the 77th Legislature adjourned *sine die* without enacting Senate and House redistricting plans and so the LRB convened and adopted Senate and House redistricting plans on July 24, 2001. Under state law, these plans, "executed and filed with the Secretary of State, shall have force and effect of law."[7]

Pursuant to the Supreme Court's direction in *Growe v. Emison*,[8] on July 23, 2001 we deferred proceedings in federal court until October 1, 2001. Proceedings on the congressional redistricting concluded on November 2, 2001 and our order issued on November 14, 2001. The Justice Department precleared the Senate LRB plan on October 15, 2001, and we heard evidence and arguments relating to challenges to that plan on November 5-6, 2001.

From November 12-15, 2001 we heard evidence relating to redistricting of the Texas House of Representatives. We did not reach a judgment, instead awaiting the Justice Department's decision on preclearance of the LRB House plan. On November 16, 2001, the Justice Department objected to parts of the LRB House plan as causing an impermissible retrogression in Hispanic voting strength. The parties submitted post-trial briefs on November 21, 2001 addressing the Justice Department's objection with

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[6] *Id.*

[7] *Id.*

[8] 507 U.S. 25 (1993).

suggested remedies as well as a remedies for any other alleged federal statutory and constitutional defects in the LRB plan.

II

Our decision here is limited to correcting the federal constitutional and statutory defects in the LRB House plan, including the concerns raised in the objection of the Justice Department.[9] That approach is dictated by the Supreme Court's decision in *Upham v. Seamon*.[10] That case dealt with the reapportionment of congressional districts in Texas following the 1980 decennial census. The legislature passed a redistricting plan, which was submitted to the Justice Department for preclearance. As in this case, the Justice Department objected to the state plan. A three-judge district court remedied the problems identified by the Justice Department, but also went further, and changed portions of the map in which the Justice Department had raised no Section 5 concerns. The Supreme Court reversed, noting that it had "never said that the entry of an objection by the Attorney General to any part of a state plan grants a district court the authority to

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[9] To the extent the plaintiffs raise claims that ask that this court enforce state law against the State, they are barred by the Eleventh Amendment, and this court has no jurisdiction to hear them, whether for injunctive or for declaratory relief. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106, 121 (1984); *Watson v. Texas*, 261 F.3d 436, 440-41 (5th Cir. 2001); *Earles v. State Bd. of Certified Public Accountants of La.*, 139 F.3d 1033, 1039-40 (5th Cir. 1998); *Hays County Guardian v. Supple*, 969 F.2d 111, 125 (5th Cir. 1992).

[10] 456 U.S. 37 (1982).

disregard aspects of the legislative plan not objected to by the Attorney General."[11] The Supreme Court held that a district court's modifications to a state plan, after objections by the Justice Department, should be "limited to those necessary to cure any constitutional or statutory defect."[12]

Speaker Laney argues that *Upham* is not controlling because the Justice Department has raised more numerous concerns in this plan than it did in the 1980 congressional plan. In *Upham* and in this case, because retrogression is measured against the entire State, the Justice Department objected to the entire plan.[13] While our remedy may affect portions of the map adjacent to those districts the Justice Department addressed in its objection, we may not depart from *Upham*. We address first those federal statutory and constitutional claims raised by the parties in this case, and then the Justice Department's objections and our remedy.

III

A

Looking first to the Balderas plaintiffs' claims, we find that the Latino population is not sufficiently compact or numerous to support additional Latino districts. We also find that, under the totality of the circumstances, the failure to create additional Latino majority districts will

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[11] *Id.* at 43.

[12] *Id.*

[13] *See id.* at 38 n.1.

not prevent full and equal Latino participation in the political process. Indeed, the creating of additional districts beyond those in our adopted plan would risk giving rise to retrogression in existing Latino majority districts. We conclude that the Balderas plaintiffs have failed to prove that Section 2 of the Voting Rights Act requires the creation of additional Latino districts based upon allegations of Latino vote dilution.[14]

B

The Amps intervenors have similarity failed to identify a violation of Section 2 of the Voting Rights Act that would compel the creation of an African-American opportunity district in Tarrant County. Their proposed minority opportunity district relies on a supposed coalition of Latino, Asian, and African-American populations to achieve majority-minority populations, presenting testimony that members of these populations have worked together in campaigns. The evidence does not persuade us, however, that Latinos, Asians, and African-Americans vote cohesively as required by *Thornburg v. Gingles*[15] so as

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[14] The Mayfield plaintiffs and Speaker Laney invite us to recognize and sustain a challenge to the LRB plan based on minority influence districts. We reiterate that we have no power to address such claims. *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 852-53 (5th Cir. 1999); *see also Johnson v. De Grandy*, 512 U.S. 997, 1008-09 (1994) (declining to decide whether "influence district" claims are cognizable under section 2 and citing three prior cases in which the Court similarly declined to so decide).

[15] 478. U.S. 30, 50-51 (1986).

to constitute a majority in a single-member district.[16] There is no section 2 violation, and therefore we have no authority to add an opportunity district.

C

Speaker Laney also argues that certain districts are unconstitutional because they are the product of intentional racial discrimination, in violation of the Equal Protection Clause. We find no such violation.

Having rejected the parties' claims, we now address the Justice Department's objection and fashion a remedy. We detail this remedy below.

IV

Before discussing the Justice Department's concerns and our remedy, we wish to be clear that our plan is a judicial plan and, while it unavoidably bears some resemblance to plans submitted by the parties in certain areas, it is entirely of our own making. Therefore it is not subject to the preclearance requirements of Section 5 of the Voting Rights Act.[17]

The Justice Department concluded that the LRB plan represented an impermissible retrogression of Latino voting strength in South and West Texas. Specifically, the Justice Department objected to the loss of a Latino District in Bexar County, as well as the reduction of Latino

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[16] *See Growe*, 507 U.S. at 41; *Valdespino*, 168 F.3d at 852-53.

[17] *Lopez v. Monterey County*, 525 U.S. 266, 704-05 (1999).

voting strength in Districts 35, 38, and 74. The plan we have adopted addresses all of their concerns.

In Bexar County, the LRB plan reduced the number of majority Latino districts from seven to six. We reconstituted a seventh majority Latino district without pairing any Latino incumbents or splitting any Voter Tabulation Districts, and we equalized the level of Spanish surnamed registration (SSRV) among all seven Latino districts. Each district has an SSRV of at least 55 percent, allowing Latinos in those districts to elect a candidate of their choice.

The Justice Department also objected to the LRB's proposed District 38, which reduced the Spanish surnamed registration level from 70.8 to 60.7 percent. The LRB Plan also removed over 40 percent of the core of the existing District 38, 90 percent of which was Latino. To respond to these objections, we modified the district. The new district has an SSRV level of 73.4 percent and current District 38 residents make up 83.1 percent new District 38. Thus, we preserve the opportunity for Latinos to elect their candidate of choice.

Similarly, the Department objected to the proposed District 74, which reduced the Spanish surname registration level from 64.5 to 48.7 percent. We reconfigured District 74, raising its SSRV level to 54.0 percent, while preserving county lines as required by the Texas Constitution. While the resulting district still has a lower SSRV level than the existing District 74, this is necessary to maintain District 80 as an additional Latino district. The SSRV level in District 74 is high enough to preserve

Latino voting strength, and does not require us to dismantle District 80 or radically redraw the entire state map. The LRB created District 80 as an additional Latino District and our map keeps it as such.

The Justice Department also objected to the proposed District 35. In the LRB plan District 35 paired a Latino incumbent and an Anglo incumbent in a district in which the Anglo had maintained a higher proportion of her constituents. Our modifications eliminate the pairing, maintaining a heavily Democratic District 35 with no incumbent, and an SSRV of 51.5%.

V

There being no reason for delay, we direct entry of final judgment in this case pursuant to Federal Rule of Civil Procedure 54(b).

So **ordered** and **signed** this 28th day of November, 2001.

/s/ Patrick E. Higginbotham
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE

/s/ John Hannah, Jr.
JOHN HANNAH, JR.
UNITED STATES DISTRICT JUDGE

/s/ T. John Ward
T. JOHN WARD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL.	§	CIVIL ACTION
VS.	§	NO. 6:01 CV 158
	§	
STATE OF TEXAS ET AL.	§	(Filed Nov. 30, 2001)

This Filing Applies to: All Actions

JOHN HANNAH, JR., Chief District Judge, having concurred in the judgment, writes further.

I have concurred with the legal conclusion reached by my brethern in regard to the House and Senate Redistricting Plan. I write separately to express my shock at the drawing of districts by the State of Texas. The dominant political party treated all members of the opposing party as if they were "enemies of the State" instead of respected state leaders, many with a great wealth of governmental knowledge and ability that has and could inure to the benefit of Texas.

The State has obviously ignored traditional redistricting principles in favor of political expediency. The State's lack of respect for political subdivisions is evident. Two examples from the State's Senate Plan will suffice although many examples from the House and Senate Plan could be cited.

El Paso County's population according to the 2000 Census is 679,622. The population figure for an ideal senate district is 672,639. A respect for political subdivisions would suggest making El Paso County into a single senatorial district. However, the State unnecessarily splits

El Paso County into Districts 29 and 19. It places the residents of southern El Paso County in District 19 along with 335,367 persons from Bexar County, hundreds of miles away and of a different community of interest.

Even more offensive is Senate District 17, a district described even by the State's own expert witness as weird, odd and bizarre. Stretching over 180 miles from University Park in Harris County to the Louisiana border, it is barely a mile wide in spots, and requires travel by boat to meet the standards of contiguity. Starting in University Park and Bellaire, in Harris County, Anglo enclaves within the borders of the City of Houston, it snakes west through a narrow corridor to another Anglo enclave of middle and upper middle class homes in the western suburbs of Houston, out to the edge of Anglo Katy. It wends it ways south into another exclusive Anglo stronghold in the First Colony area of Fort Bend County, carefully avoiding the sections of Black population in bordering Missouri City while retaining the Anglo populations of Missouri City. After wending its way south through the Anglo portions of Fort Bend County, it reaches into Brazoria County. It then veers northeast along a narrow strip of Galveston County, taking in the Anglo community of Jamaica Beach and a narrow part of the City of Galveston which borders the beach, but draws its line at the neighborhood of Galveston which contain a large Black population. The district continues its northeast direction along the cost of Chambers County, where its main inhabitants are the birds in the Anahuac National Wildlife Refuge, the population maps showing zero for human inhabitants in District 17's section of Chambers County. Travel from the Galveston portion of

this district into the Chambers County portion of this district, if eschewing a route into District 4, requires a trip on the Bolivar Ferry onto the Bolivar Peninsula. The District ends in Jefferson County, at the border of Louisiana. In Jefferson County, it splits the community of Port Arthur from its suburbs and, more importantly from Beaumont. The district lines show a careful encompassment of the small black community within Port Arthur while rejecting the larger Black bordering community of Beaumont.

Examining District 17, referred to in the trial of this case as the "fish hook," we note its extremely irregularity on its face and deplore the State's rejection of traditional redistricting principles such as compactness, respect for political subdivisions, and community of interests. 6 county lines are split by this district and no whole county is included. Further, District 17 splits 17 or 18 towns and cities in its meander through the coastal plane of southeastern Texas.

The evidence concerning the lack of regard for traditional communities of interest was compelling. Jefferson County residents testified that they are often adverse to residents of Harris County on issues of air pollution and water rights and that the working class communities of Jefferson County have nothing in common with the middle and upper middle class suburbs of Houston or with exclusive University Park. There was testimony that Jefferson County has been wholly within one senate district for the last 168 years.

Further, evidence showed that District 17 as it now stands, was introduced by a last minute amendment, and

voted on by the Legislative Redistricting Board over the strong objection of Lieutenant Governor Raftliff who deplored the lack of fairness inherent in voting on an amendment which the public had not have a chance to see.

All this being said, the federal courts have a limited role in considering challenges to precleared, legislatively-adopted redistricting plans. We may not substitute our judgment for that of the Legislature, in this case, the Legislative Redistricting Board, unless we find that the plan runs afoul of federal law. The state may engage in political gerrymandering even if it "so happens that the most loyal Democrats happen to be black Democrats and even if the State were conscious of that fact."[1] However, I concur with the legal conclusion that plaintiffs have failed to meet their evidentiary burden of showing that the Texas Senate plan violates the Constitution or laws of the United States, as distasteful as portions of it may be.

SIGNED this 30th day of November, 2001.

/s/ John Hannah, Jr.
JOHN HANNAH, JR.
Chief District Judge

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[1] *Hunt v. Cromartie*, 526 U.S. 541, 551 (1999).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL. Plaintiffs,	)	
VS.	)	CIVIL ACTION NO. 6:01CV158
STATE OF TEXAS, ET AL. Defendants.	)	

NOTICE OF APPEAL

(Filed Dec. 24, 2001)

TO: THE HONORABLE PATRICK E. HIGGINBOTHAM,
UNITED STATES CIRCUIT JUDGE;

THE HONORABLE JOHN T. WARD,
UNITED STATES DISTRICT JUDGE;

THE HONORABLE JOHN HANNA, JR.
UNITED STATES DISTRICT JUDGE:

Notice is hereby given that Emily Amps, Louis Laster, Terry Meza, Gina Dixon, and Dianna Villasana, Intervenors in the above named case, hereby appeal to the United States Supreme Court, pursuant to 28 U.S.C. § 1253, from the order and judgment adopting a Texas State House of Representatives redistricting plan for the State of Texas entered in this action on the 28th day of November, 2001.

Respectfully submitted,

/s/ Art Brender
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State Bar No. 02954500

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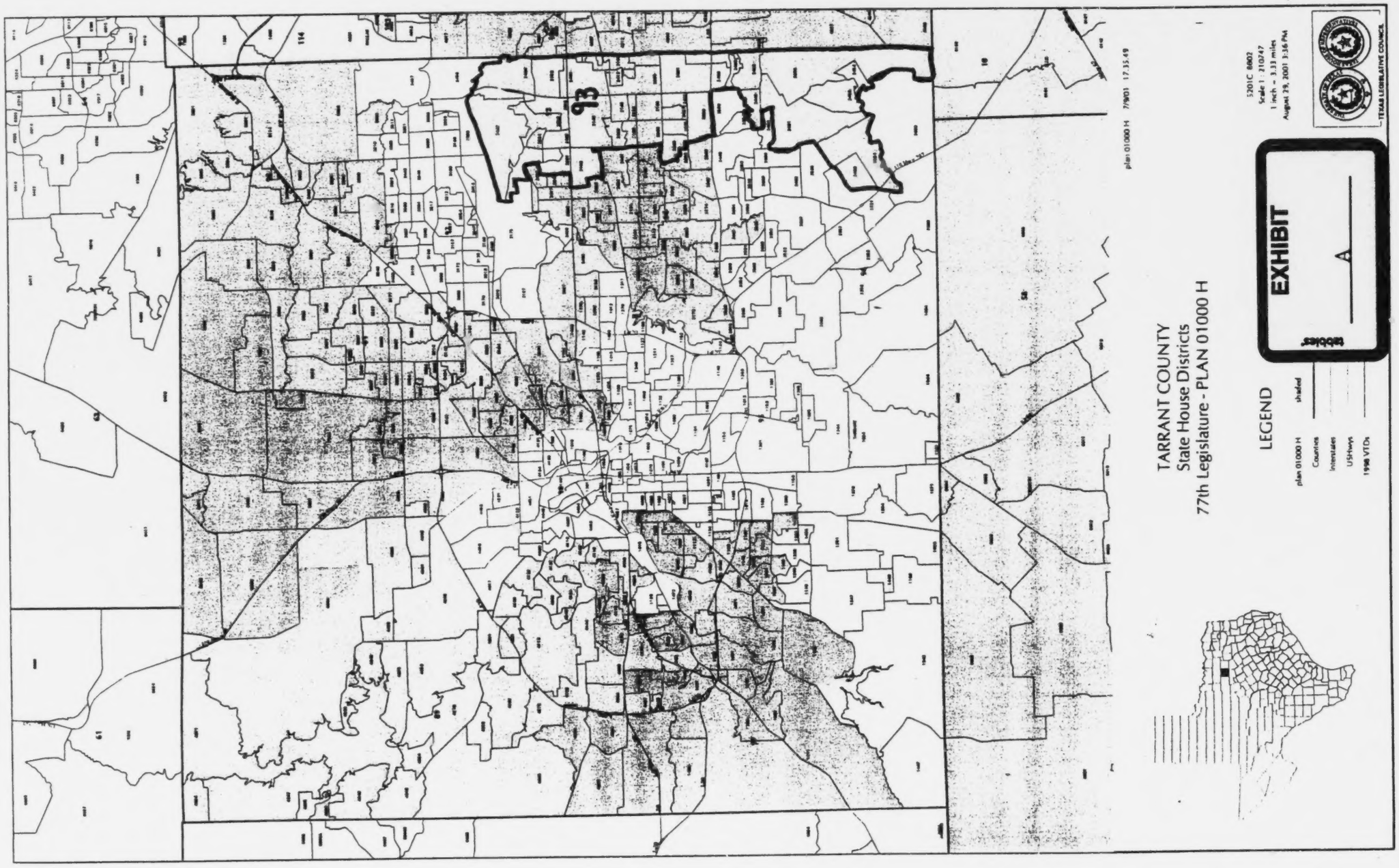
ATTORNEYS FOR INTERVENORS

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served upon the attorneys of record of the above cause, via first class mail, in accordance with the Federal Rules of Civil Procedure, on this the 21st day of December, 2001.

/s/ Art Brender
ART BRENDER



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B.S. Texas Wesleyan College, Fort Worth, Texas 1951
L.L.B. University of Texas at Austin 1954

Member of the Texas State House of Representatives, Tarrant County, Texas, 4 Terms 1959-1969

Attorney of Record:

Hill v. Stone, 421 U.S. 289, 95 S.Ct. 1637, 44 L.Ed.2d 172 (1974);
Graves v. Barnes, 378 F.Supp. 640 (W.D. Tex. 1974), remanded for termination of mootness, subnom;
White v. Regster, 422 U.S. 935 (1975);
McCarthy v. Briscoe, 429 U.S. 1316, 47 S. Ct. 9, 50 L.Ed.2d 47 (1976)
Graves v. Barnes (Graves IV), 446 F.Supp. 560 (W.D. Tex. 1977) (Wood, J. Dissenting), affm'd subnom; and
Briscoe v. Escalante, 435 U.S. 901 (1978).

I am a lawyer licensed by the Supreme Court of the State of Texas and have been so licensed since 1954. I am a former State Representative having served four terms in the Texas House of Representatives.

I represented the Plaintiffs in *Escalante v. White, Intervention in Graves v. Barnes*, 378 F.Supp. 640 (W.D. Tex. 1974), remanded for termination of mootness, subnom, *White v. Regster*, 422 U.S. 935 (1975), *Graves v. Barnes (Graves IV)*, 446 F.Supp. 560 (W.D. Tex. 1977) (Wood, J. Dissenting), affm'd subnom *Briscoe v. Escalante*, 435 U.S. 901 (1978) and am familiar with the history of suppression of minority voters in Tarrant County through the years. I will testify about the history of suppression of

minority voters in the State House of Representatives and Senate Districts in Tarrant County and will render an opinion that the legislation plan 1189H current LRB plan 1289H suppresses minority vote and dilutes and cancels minority votes in both the House and Senate races and is done intentionally as part of a long standing effort to diminish, minimize or dilute minority votes. Further, I will testify about the various communities of interest in Tarrant County, Texas. I will testify that the removal of minorities from eastern and western portions of House District 93, whose demographics have reflected a change from 1990, when the District was 70% Anglo to 2000, when it was 53% minority should have resulted in a District that, in my opinion, would have elected a minority through a coalition voting of African Americans, Latinos and Asians.

I will further testify that testimony and history in Tarrant County indicates that such coalitions exist. I will testify that federal courts have found the history of discrimination against minorities and suppression of their rights to vote in State House races as part of the Court's findings in *Escalante, supra* and with the House map together with the attempts by the LRB to change present House Districts reflect that continued trend of suppression by incumbents and the LRB. I will testify about similar suppression of minority vote in the apportionment of Tarrant County Commissioner's Court Precincts. I will further testify that the progression of State House Plans from the Legislative Plan 01189H to the first Cornyn proposal plan 1238H to the plan adopted by the LRB 01289H evidence an intent to suppress and diminish minority vote, split their vote so as to make it ineffective

similar to that which has happened historically in Tarrant County, at the State and local level in apportioning the electorate be it in State Senate, House or local County Commission in similar districts. I will testify in my opinion that the Legislative plan 01189H and the LRB plan 01289H are unconstitutional and contrary to the Voting Rights Act. Further, I will testify that Intervenors Amps' (plan(s) 01319H and similar plans 1328H, 1338H, 1355H) are constitutional and consistent with the Voting Rights Act and the coalition vote will in all reasonable probability elect a minority to represent the interests of the African American, Latino and Asian minority populations who have similar interests both economically, socially and in the pursuit of public policy initiatives.

PAUL GEISEL, PhD

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Paul Geisel holds the PhD degree, in Sociology, from Vanderbilt University, and is currently professor of urban affairs, city/regional planning and urban sociology. His previous experience in research and teaching include positions at Southern Methodist University where he served as Director of Urban Programs, the University of Pittsburgh, and Arizona State University. He also had an assignment as Research Project Director for the Canadian Welfare Council. Dr. Geisel was the first Executive Director of the Dallas Alliance.

He holds membership in numerous professional and service organizations and is a prolific speaker and writer for both public and private organizations. Professor Geisel consults with numerous agencies on issues of race, housing, management, demographic trends and social economics. He has completed over 200 grants and studies in which are covered a broad spectrum of urban issues from population characteristics and land use to future trends and planning goals. Dr. Geisel is widely published having written 91 articles, books and monographs.

His board memberships include Dispute Resolution Services, Neighborhood Housing Services, Homeless Coalition, American Red Cross, Senior Services of Tarrant County, Dallas Alliance and Treescape Dallas. Dr. Geisel

has served Rotary in a number of capacities: as District Governor; President of Arlington South Rotary Club; District Group Study Exchange Coordinator; and Group Study Exchange team leader to Argentina.

REPORT OF PAUL GEISEL

I am a Professor of Urban Studies at the University of Texas at Arlington. I have been active in and have conducted several studies and examined the sociological associations, demographics of both Tarrant County, Texas and the City of Arlington and as such, I am familiar with polarized voting in State of Texas and Tarrant County. I have been active in the east Arlington and west Grand Prairie communities covered by present House Districts 93 and 94. I have prepared attendance plans for the Arlington Independent School District which includes not only the City of Arlington, but also the western portion of Grand Prairie within Tarrant County. I have been involved in various urban issues within the City of Arlington and the affected areas. I have been active in political campaigns in Arlington, Texas and am familiar with the coalition of minority voters in the City of Arlington and in Tarrant County. I will testify about how coalition voting elected Elzie Odom, the first African American Mayor of Arlington, Texas. I will testify about how coalition voting elected Reverend Mike Glaspie to the Arlington Independent School District Board of Directors. The AISD includes west Grand Prairie to the Tarrant County line. School Board members are elected at large.

I am familiar with the patterns of minority groups and housing in Arlington and west Grand Prairie and will testify about the particularized needs and issues of public concern that are common to African Americans, Latinos and Asians within the east Arlington, west Grand Prairie communities. I have reviewed the various maps and proposals put forth from the Legislature, from Attorney General Cornyn, and the district ultimately drawn by the LRB. I will testify that the LRB map, now a competing proposal advanced by the State of Texas is similar to the map passed by the House this session and that this plan removes precincts that are overwhelmingly minority (African American) in west Grand Prairie and east Arlington and places them in the Hurst-Euless-Bedford House District 92. I will also testify that these maps remove Hispanic and African American precincts in the western part of the District, placing them in House District 94, another district that is overwhelmingly Anglo. I will testify that there is no real reason, other than race, for removing these minority groups from the House District 93, where they have been since single member districts were adopted by the federal courts in 1978 and placing them in these two largely Anglo districts. I will testify about the changing demographics in the east Arlington/west Grand Prairie neighborhoods that changed the district from 70% Anglo district to a 54% minority district. I will testify about how the minority groups being removed and placed in House Districts 92 and 94 do not have interests in common with those districts, in particular, those that are placed in the Hurst-Euless-Bedford District (House District 92), do not have common school districts, are separated geographically by

the Trinity River, such that they must travel a considerable distance to gain access by road through the H-E-B area and that the economic conditions, neighborhood conditions, housing conditions, and numerous other social factors are completely different between the two groups and there is no commonality whatsoever. I will testify that minorities are sufficiently numerous and compact in east Arlington/west Grand Prairie and they should be left in this district in this area where they have been since 1978 and to remove them would suppress, dilute, minimize and cancel their influence in State Representative elections. I have reviewed maps proposed by the Amps Intervenors, including 01319H (and those maps with similar proposals for Tarrant County, including 1338, 1328, and 1355) and these maps meet the test of *Thornburg v. Gingles*, in that the minority community is sufficiently large and compact to constitute a majority in a single member district, that the minorities are politically cohesive and the Anglo voters' vote have a block to defeat the minorities' preferred candidates. Under the totality of the circumstances, Tarrant County is entitled to three minority districts and that the dilution and cancellation of the opportunity of minorities to elect one of their own in District 93 was intentional and for the purpose of preventing minorities from possessing the same opportunity to participate in the political process and elect representatives of their own choice as enjoyed by other voters. I will testify that under the various proposals advanced by Intervenors Amps, *et al*, the black voting age population of District 93 is 17.7% to 18%; the Hispanic voting age population is 27.4% to 28.2%; and the other category which is largely the Asian community in

east Arlington/west Grand Prairie is 9.3% to 9.1%. I will testify that citizenship data is not available from the 2000 census and that it is very risky to "guess" at what the citizenship ratios will be in a district that has grown so much in a minority population and because the "average" citizen HVAP calculated from the 1990 census includes Hispanics in Fort Worth where the percent of non-citizen Hispanics is much higher than in Arlington and Grand Prairie. In light of the very wide percentage range by county of Hispanic citizen voting population derived from the 1999 census and used by some experts in this litigation, (the range of 2.2% of the Hispanic population is non-citizen in DeWitt County to 55.7% in Titus County). This measure is not relevant to House District 93. Using the citizen voting age population range from the submission by the LRB of Texas to the Civil Rights Division of the Justice Department as part of the preapproval process of the Voting Rights Act specific to Tarrant County reduces the citizen voting age of population from a range of 54.2% (01319H, 01338H, and 01355H) and 55% (01328H) to 50% for both plans (rounded).

I have adopted the reports of the expert witnesses presented by the Balderas and Mayfield Plaintiffs including: Richard W. Murrary; James Aldrete; Alan Lichtman; J.L. Polinard; Robert Herrera; Jeffrey Smith; Dan Weiser; William Kelley; Mark Fossett; Jorge Chapa; and Richard Engstrom, to the extent those reports and the research they support my opinion that the LRB proposal and legislative plan or any other proposal advanced by any other party that splits minority precincts from House District 93 and places them in House Districts 92 or 94 does so

intentionally and for the purpose of canceling, minimizing or diluting the vote of minorities in those areas and the minority vote in House District 93 in general in violation of the Fourteenth Amendment to the United States Constitution and Sections 2 and 5 of the Voting Rights Act. I will also rely on the submissions of the State of Texas to the U.S. Department of Justice.

I rely on my personal knowledge and the testimony of witness Don Gladden, as well as the findings in the record in *Graves v. Barnes*, to the effect that there has been a tradition in Tarrant County of suppressing minority vote, and incorporate those considerations and that history, in my opinion and conclusions, that race was the motivating factor and only reason for removing minorities from their traditional location in House District 93 and placing them in House Districts where they share no commonality of interest and where their vote will be totally ineffective in connection with any representative race and does, thus, cancel, minimize and dilute the minority vote.

I will also testify that this area will continue to grow and increase as a minority area and is a minority opportunity district, one in which a much greater percentage of minorities will live in a few years. I will testify that the minority groups are politically cohesive, and form coalitions as stated above and the incoming minority groups will do likewise. I will testify that splitting District 93, as has been proposed, will result in a lack of opportunity by African Americans, Latinos and Asians to participate in the political process through the coalition, which has worked well in city and school district elections. Furthermore, I will testify that the depressed level of political participation is a result of disparate socioeconomic status,

but that the prospect of electing a minority to the State House of Representatives would greatly increase minority participation by giving them a stake in the process. I will testify that since demographic changes resulted in present District 93, being a majority/minority district, that to change that composition and make it a majority Anglo district is a regression and hence, is not in compliance with Section 5 of the Voting Rights Act in that the proposed change in the district would deny and abridge the right to vote on account of race, color, or membership in a language minority group and hence, put minority voters in a worse position than they would be in if the present plan were to remain in effect. I will testify that needs achieved by the political process through the election of Elzie Odom as Mayor and Michael Glaspie to the School Board would be wiped out at a higher level were the demographic changes that occurred in District 93 and be dissipated by splitting these minorities into districts in which Anglos comprise better than 75% of the voting age population. Thus, the LRB and Legislative plans are retrogressive, and the effect would be to reduce minority voters effective exercise of the electoral franchise.

I will also testify that based on history and on composition of the legislative districts under the present plan 01000H, that the African American and Latino populations in Forth Worth have been packed largely into District 95. I will testify that in the previous redistricting, African Americans on the south side and Stop Six African American communities, which are contiguous communities from downtown Forth Worth I-35 east and south to Loop 820, were split by incumbent State Representatives, such that the western portion of that community was

placed in a geographically distant district which comprised the highest income level suburban cities in Tarrant County – Colleyville, Grapevine and Southlake. These suburban cities have absolutely nothing in common with poor, elderly intercity African Americans and Latinos. Nevertheless, that community was split in a way to deny those intercity minorities an effective vote for State Representative. I will testify that unpacking District 95 will allow those minorities that have been placed in there, so as to minimize their effect on the electoral process, free to exercise a franchise and have the same opportunity as other voters. The effect of doing so would be to create a Hispanic majority district in District 90, thus affording Tarrant County to three majority, minority districts proportional to the voting age population of minorities in Tarrant County. African Americans constitute 12.2% of VAP; Hispanic 17.2%; and Asians 4%, thus, constituting a total African American, Asian, Latino minority voting age population of 34%. Tarrant County currently only has one minority State Representative in one majority minority district. Adopting plan 01319H (or one of the similar plans 01338H or 01355H) will allow minorities in Tarrant County to have the districts that are compact and sufficiently numerous to permit the election of three minority State Representatives, a number that would be proportional to the percent of minority voting age population in Tarrant County. Tarrant County has ten representative districts. I will testify that the plans proposed by the Amps Intervenors will help remedy the history of official discrimination of minorities in Tarrant County, including the use of devices such as at large election and discriminatory single member districts, to exclude or diminish

minority vote in intercity Fort Worth and Arlington and to permit members of minority groups to be elected to public office and increase voter participation because of their access and ability to elect minority representatives.